

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re U.S. Service Mark Application of: Joel and Barbara Lundberg

Serial No.: 78/546259

Filed: January 12, 2005

Word Mark and Design: EVERGREEN MORTGAGE

Published in the Official Gazette on June 6, 2006

In re U.S. Service Mark Registration of: Joel and Barbara Lundberg

Registration No.: 3,096,830 / 78546218

Registration Date: May 23, 2006

Word Mark: EVERGREEN MORTGAGE

CERTIFICATE OF EXPRESS MAILING

EXPRESS MAIL MAILING LABEL NO. EV522820845US
DATE OF DEPOSIT: August 4, 2006

I hereby certify that this paper and fees are being deposited on the date indicated above with the United States Postal Service as "Express Mail Post Office To Addressee," under 37 CFR § 1.10, addressed to: BOX TTAB FEE, Commissioner For Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451

TYPED NAME: Allison G. Runge

SIGNATURE *Allison Runge*

WACHOVIA CORPORATION,

Opposer and Petitioner,

v.

JOEL LUNDBERG AND BARBARA LUNDBERG,

Applicants and Registrants.

Opposition No. _____

Cancellation No. _____

BOX TTAB FEE

Commissioner for Trademarks

Post Office Box 1451

Alexandria, VA 22313-1451

COMBINED NOTICE OF OPPOSITION AND PETITION TO CANCEL

Opposer and Petitioner, WACHOVIA CORPORATION, ("Opposer"), is a corporation organized and existing under the laws of the State of North Carolina, with offices at One Wachovia Center, 301 South College Street in Charlotte, North Carolina. Opposer believes it will be damaged by registration of the word mark EVERGREEN MORTGAGE & design as shown in Application Serial No. 78/546259 by Applicants and Registrants, JOEL LUNDBERG

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and BARBARA LUNDBERG, ("the Applicants") and hereby opposes the same. Opposer also believes that it has been and continues to be damaged by Applicants' Principal Register registration for the word mark EVERGREEN MORTGAGE as shown in Federal Service Mark Registration No. 3,096,830 and petitions for cancellation thereof as set forth herein. (Applicants' EVERGREEN MORTGAGE word mark and word mark & design shall collectively be referred to hereinafter as "Applicants' Marks"). The grounds for Opposer's opposition and cancellation are as follows:

1. Opposer is a leading provider of banking and financial services in the United States. Opposer is the fourth largest U.S. bank holding company and the third largest U.S. full-service brokerage firm.

2. Since at least 1971, Evergreen Investment Company, LLC, a subsidiary of Opposer, has continuously used the mark EVERGREEN ("Opposer's Mark") in interstate commerce in connection with the promotion and sale of mutual fund brokerage services.

3. On December 13, 2005, Opposer filed Federal Trademark Application No. 78/772491 to register Opposer's Mark in International Class 36 for mutual fund brokerage, mutual fund distribution, mutual fund investment, and investment advisory services.

4. Applicants have registered word mark EVERGREEN MORTGAGE in International Class 36 for mortgage loan services as shown on Applicants' Application No. 78/546218 and as registered in Federal Service Mark Registration No. 3,096,830.

5. Applicants seek to register the word mark EVERGREEN MORTGAGE & design in International Class 36 for mortgage loan services as shown on Application No. 78/546259. Opposer's extension of time in which to file a Notice of Opposition to Application No. 76/570,848 has not yet expired.

6. On May 17, 2006, the United States Patent and Trademark Office suspended Opposer's application pending the disposition of Applicants' Application Nos. 78/546259 and 78/546218. Subsequently on May 23, 2006, Applicants' Application No. 78/546218 received Federal Trademark Registration No. 3,096,830.

7. Opposer has promoted and sold its services in interstate commerce under Opposer's Mark since long prior to any alleged use by Applicants of Applicants' Marks.

8. As a result of the use, promotion, and advertising of Opposer's Mark, such mark has become well known to the public and has accordingly acquired significant goodwill. Opposer's Mark identifies and distinguishes Opposer's services from the services of others, and identifies the source and origin thereof to the public.

9. Applicants' use of Applicants' Marks are likely to cause confusion in the minds of the public that Applicants' goods and services originate from or are licensed, sponsored or otherwise authorized by Opposer whereas in fact they are not.

10. Applicants' Marks so resembles Opposer's Mark previously used in the United States by Opposer and not abandoned, as to be likely, when applied to Applicants' goods and services, to cause confusion or to cause mistake or to deceive and are an attempt to deceive the public and to benefit from the reputation and goodwill developed by Opposer.

11. Applicants' commercial use of Applicants' Marks will cause dilution of the distinctive quality of Opposer's Mark.

12. Opposer has been and continues to be injured and damaged by Applicants' Principal Register registration for the word mark EVERGREEN MORTGAGE, and Opposer will be injured and damaged by the granting to Applicants of registration for the word mark EVERGREEN MORTGAGE & design. When applied to Applicants' goods and services,

Applicants' Marks (1) are likely to cause confusion, or to cause mistake, or to deceive; (2) falsely suggest a connection with Opposer; (3) dilute the distinctive quality of Opposer's Mark; and (4) will damage Opposer's valuable goodwill in Opposer's Mark.

WHEREFORE, Opposer requests the following:

1. Applicants' registration for word mark EVERGREEN MORTGAGE as shown in Federal Service Mark Registration No. 3,096,830 be cancelled; and

2. Applicants' application for word mark EVERGREEN MORTGAGE & design as shown on Application No. 78/546259 be rejected.

Submitted herewith is a check in the amount of \$600.00 in payment of the requisite fee under 37 C.F.R. §§ 2.6(a)(16) and 2.6(a)(17) for filing of the Notice of Opposition and Petition to Cancel. The Commissioner is authorized to debit any underpayment or credit any overpayment to Deposit Account No. 18-1215 of the Opposer's undersigned attorney. This Combined Notice of Opposition and Petition to Cancel is being submitted in triplicate, via United States Postal Service Express Mail, Post Office to Addressee.

Respectfully submitted,

Aug 4, 2006
Date

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Via US Postal Service
Express Mail Post Office to Addressee

TO: BOX TTAB FEE
Commissioner for Trademarks
Post Office Box 1451
Alexandria, Virginia 22313-1451

DATE: August 4, 2006

RE: Wachovia Corporation v. Joel Lunberg and Barbara Lunberg
KCLH File # 0027492-00084


HEREWITH THE FOLLOWING:

- Three (3) copies of Combined Notice Of Opposition And Petition To Cancel
- Check in the amount of \$600.00 in payment of the requisite fee under 37 C.F.R. §§ 2.6(a)(16) and 2.6(a)(17)


Allison G. Runge
For the Firm

agr

cc: Eileen Dunlap (w/enclosure)
Alice C. Richey, Esq.


08-04-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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